IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

BRAINWARE, INC.,

Plaintiff,

v. Civil Action No.: 3:11cv755-REP

SCAN-OPTICS, LTD.,

and

SCAN-OPTICS, LLC,

Defendants.

DEFENDANT SCAN OPTICS, LTD.'S ANSWER PRESENTING DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW, Defendant Scan Optics, Ltd. ("Scan Optics"), by counsel, and for its Answer to the First Amended Complaint ("Amended Complaint") filed by Plaintiff Brainware, Inc. ("Brainware"), states as follows:

1. The allegations of Paragraph 1 of the Amended Complaint are denied.

2. The allegations of Paragraph 2 of the Amended Complaint are denied. To the extent that Paragraph 2 of the Amended Complaint alleges contents of the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

3. The allegations of Paragraph 3 of the Amended Complaint are denied.

4. Scan Optics admits that it is a wholly owned subsidiary of Scan Optics, LLC. The remaining allegations of Paragraph 4 of the Amended Complaint are not directed at Scan Optics, and therefore do not require a response. To the extent a response to these remaining allegations is required, those allegations are denied.

5. The allegations of Paragraph 5 of the Amended Complaint are denied.

6. The allegations of Paragraph 6 of the Amended Complaint are denied.

7. Paragraph 7 of the Amended Complaint contains no allegations to which a response is required. To the extent a response is required, Scan Optics denies that Brainware is entitled to any damages and that there is validity to any alter ego allegations set forth by Brainware.

8. Upon information and belief, the allegations of Paragraph 8 of the Amended Complaint are admitted.

9. The allegations of Paragraph 9 of the Amended Complaint are admitted.

10. The allegations of Paragraph 10 of the Amended Complaint are not directed at Scan Optics, and therefore do not require a response. To the extent a response is required, the allegations of the first sentence of Paragraph 10 are admitted. Scan Optics has insufficient information to either admit or deny the remaining allegations contained in Paragraph 10, and therefore denies the same.

11. Paragraph 11 of the Amended Complaint contains conclusions of law to which no response is required.

12. Paragraph 12 of the Amended Complaint contains conclusions of law to which no response is required. To the extent a response is required, Scan Optics denies that it executed the Agreement and/or otherwise entered into an enforceable contract with Brainware, and the allegations of Paragraph 8 are therefore denied. To the extent that Paragraph 8 of the Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

13. Paragraph 13 of the Amended Complaint contains conclusions of law to which no response is required. Moreover, the allegations of Paragraph 13 of the Amended Complaint are not directed at Scan Optics, and therefore do not require a response. To the extent a response is required, Scan Optics has insufficient information to either admit or deny the allegations of Paragraph 13, and therefore denies the same.

14. Paragraph 14 of the Complaint sets forth legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 14 of the Amended Complaint are denied.

15. Upon information and belief, the allegations of Paragraph 15 of the Amended Complaint are admitted.

16. Scan Optics has insufficient knowledge to either admit or deny the allegations of Paragraph 16 of the Complaint, and therefore denies the same.

17. Scan Optics admits that Brainware's website is located at www.brainware.com. Scan Optics has insufficient knowledge to either admit or deny the contents of Brainware's website, and therefore denies the remaining allegations of Paragraph 17 of the Complaint.

18. Scan Optics has insufficient information to either admit or deny the allegations contained in Paragraph 18 of the Complaint, and therefore denies the same.

19. The allegations of Paragraph 19 of the Amended Complaint are not directed at Scan Optics and therefore do not require a response. To the extent a response is required, Scan Optics has insufficient information to either admit or deny the allegations of Paragraph 19 of the Amended Complaint.

20. The allegations of Paragraph 20 of the Amended Complaint are not directed at Scan Optics and therefore do not require a response. To the extent a response is required, Scan

Optics has insufficient information to either admit or deny the allegations of Paragraph 20 of the Amended Complaint.

21. Scan Optics has insufficient information to either admit or deny what Patriarch "believes" and therefore denies the allegations of Paragraph 21 of the Amended Complaint.

22. The allegations of Paragraph 22 of the Amended Complaint are denied.

23. The allegations of Paragraph 23 of the Amended Complaint are denied.

24. The allegations of Paragraph 24 of the Amended Complaint are denied. Scan Optics and Scan Optics, LLC are, in fact, distinct and separate legal entities.

25. Paragraph 25 of the Complaint sets forth legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 25 of the Amended Complaint are denied.

26. The allegations of Paragraph 26 of the Amended Complaint are denied.

27. The allegations of Paragraph 27 of the Amended Complaint are denied.

28. The allegations of Paragraph 28 of the Amended Complaint are denied.

29. The allegations of Paragraph 29 of the Amended Complaint are denied.

30. Scan Optics denies the allegations contained in Paragraph 30 of the Amended Complaint, as no enforceable contract with Brainware was formed. To the extent that Paragraph 30 of the Amended Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

31. Scan Optics denies any obligations under the alleged Agreement, as no enforceable contract with Brainware was formed. To the extent that Paragraph 31 of the Amended Complaint sets forth text allegedly contained in the document which Brainware alleges

constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

32. Scan Optics denies any obligations under the alleged Agreement, as no enforceable contract with Brainware was formed. To the extent that Paragraph 32 of the Amended Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

33. The allegations of Paragraph 33 of the Amended Complaint are denied.

34. Scan Optics denies that it is obligated to make any payments alleged in Paragraph 34 of the Complaint.

35. The allegations of Paragraph 35 of the Amended Complaint are denied.

36. The allegations of Paragraph 36 of the Amended Complaint are denied.

37. Scan Optics admits that individuals employed by Scan Optics, LLC discussed with Brainware potential business solutions to the dispute regarding the alleged Agreement. Scan Optics states that such discussions were made in the context of potential settlement, and are not properly before the Court in this matter. The remaining allegations of Paragraph 37 of the Complaint are denied.

38. The allegations of Paragraph 38 of the Amended Complaint are denied.

39. Scan Optics denies any obligations under the alleged Agreement, as no enforceable contract with Brainware was formed. To the extent that Paragraph 39 of the Amended Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

40. Scan Optics denies any obligations under the alleged Agreement, as no enforceable contract with Brainware was formed. To the extent that Paragraph 40 of the Amended Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

41. Paragraph 41 of the Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 41 of the Amended Complaint are denied.

42. Scan Optics incorporates, by reference, its responses to Paragraphs 1-41 of the Amended Complaint as if set forth fully herein.

43. The allegations of Paragraph 43 of the Amended Complaint are denied.

44. The allegations of Paragraph 44 of the Amended Complaint are denied.

45. The allegations of Paragraph 45 of the Amended Complaint are denied.

46. The allegations of Paragraph 46 of the Amended Complaint are denied.

47. Scan Optics incorporates, by reference, its responses to Paragraphs 1-46 of the Complaint as if set forth fully herein.

48. The allegations of Paragraph 48 of the Amended Complaint are denied.

49. The allegations of Paragraph 49 of the Amended Complaint are denied.

50. Scan Optics denies that it is obligated to Brainware in any amount.

51. Any allegation not expressly admitted herein is denied.

First Defense: Failure to State a Claim

Brainware has failed state a claim upon which relief can be granted.

Second Defense: Lack of Mutual Assent

Scan Optics submits that there was no agreement as to the essential terms of any alleged agreement and there was therefore no mutual assent to the terms of such alleged agreement, and thus no valid agreement was formed. While expressly denying the existence of any contract, Scan Optics avers that Brainware presented Scan Optics with a draft form agreement, whereafter Brainware and Scan Optics negotiated modifications to that form agreement. Brainware thereafter induced Peter Moralee to sign the signature page of the agreement, to which the negotiated changes had not been made. The executed agreement therefore did not reflect mirror-image terms to which Scan Optics and Brainware mutually assented.

Third Defense: Fraudulent Inducement

While expressly denying the existence of any contract, Scan Optics avers that any alleged agreement between Scan Optics and Brainware is voidable by reason of fraud. In negotiating the alleged contractual terms, Brainware made intentional and/or negligent misrepresentations concerning material facts, for the purpose of securing the contract, which misrepresentations Scan Optics relied upon and which induced it to enter into the contract. Specifically, Brainware's agents, including Colin Kaye, made extensive misrepresentations, including, but not limited to, the nature and extent of professional services work available to Scan Optics if it entered into an agreement, sales leads that were available to Scan Optics through a lead generation system, and a formalized partner training program available and necessary to implement the Brainware software. Scan Optics relied on these misrepresentations. Any agreement which resulted from these misrepresentations should therefore be set aside.

Fourth Defense: First Material Breach

While expressly denying the existence of any contract, Scan Optics avers that if any alleged agreement between Scan Optics and Brainware was formed, Brainware's claim is barred by its own material breach of contract and failure to perform conditions precedent to Scan Optics' performance. Specifically, Brainware failed to provide the licenses and other software required by the agreement, failed to train Scan Optics and provide technical support as promised, and failed to provide sales leads as promised, causing Scan Optics to be unable to perform its obligations under any agreement between Scan Optics and Brainware.

Fifth Defense: Waiver and Estoppel

While expressly denying the existence of any contract, Scan Optics avers that if any alleged agreement between Scan Optics and Brainware was formed, Brainware's claim that Scan Optics breached a confidentiality provision in the alleged agreement is barred by the doctrines of waiver and estoppel. Brainware was aware that Scan Optics, LLC had information concerning Brainware. Brainware expressly or impliedly authorized Scan Optics, LLC to obtain such information and/or provided such information to Scan Optics, LLC, which information it now improperly alleges was disclosed in breach of Scan Optics' alleged confidentiality obligations. Moreover, Scan Optics relied upon Brainware's authorization of disclosure of such information. Brainware therefore waived any claim to breach of an alleged confidentiality provision and should be estopped from seeking to enforce the same.

Sixth Affirmative Defense: Estoppel

While expressly denying that Scan Optics is operated as the alter ego of Scan Optics, LLC and further denying that sufficient facts exist to warrant piercing Scan Optics's corporate veil, Scan Optics avers that any such claim by Brainware is barred by the doctrine of estoppel. Brainware knew or should have known the essential facts of the relationship between Scan Optics and Scan Optics, LLC and/or that Scan Optics, Ltd. was a wholly owned subsidiary of Scan Optics, LLC. Brainware chose to freely and voluntarily enter into an alleged agreement solely with Scan Optics. Brainware is therefore estopped to claim that either entity is the alter ego of the other.

WHEREFORE, having fully answered the Amended Complaint, Defendant Scan Optics, Ltd. requests that this matter against it be dismissed, together with costs incurred herein; and the award of such other and further relief as the Court deems just and proper.

JURY TRIAL REQUESTED

Respectfully submitted,

SCAN OPTICS, LTD.
By Counsel

s/Daniel L. Fitch
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2012, I electronically filed the foregoing Answer to Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kevin W. Mottley, Esq.
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Richmond, VA 23226
Email: kevinmottley@mottleylawfirm.com
Counsel for Plaintiff

And sent by US Mail, first class, postage pre-paid to the following:

Scan Optics, LLC
169 Progress Drive
Manchester, CT 06042

and

Scan Optics, LLC
Corporation Service Company
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s/Daniel L. Fitch

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